

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

**UNITED STATES OF AMERICA,**

**v.**

**CRIMINAL NO.: 2:17cr85**

**EDWARD ALLEN McNAMES**

**Defendant.**

**DEFENDANT'S UNOPPOSED  
MOTION TO WITHDRAW GUILTY PLEA**

Comes now the Defendant, Edward Allen McNames, by and through counsel, pursuant to Rule 11(d)(1) of the Federal Rules of Criminal Procedure and moves the Court to allow him to withdraw his plea of guilty. The Government joins in this motion. In support of this motion, Mr. McNames states the following:

1. On May 18, 2017, Defendant was charged in a four count indictment with Receipt of Images of Minors Engaging in Sexually Explicit Conduct in violation of 18 U.S.C. 2252(a)(2) and with Possession of Images of Minors Engaging in Sexually Explicit Conduct, in violation of 18 U.S.C. 2252(a)(4)(B).

2. On July 21, 2017, in accordance with the terms of a written Plea Agreement, Mr. McNames appeared before the Honorable Lawrence R. Leonard and pled guilty

to Count 4 of the indictment. The plea has not yet been accepted by the District Court and Mr. McNames has not been adjudicated guilty.

3. In accordance with the Plea Agreement, and by Order of the Court, a Presentence Investigation Report was prepared. ECF No. 26. In that report, the Defendant was attributed with a total of 3,030 images of child pornography (¶15) and consequently received a 5 level enhancement for possessing more than 600 images. PSR ¶27.

4. On November 20, 2017, the Defendant, through counsel, objected to that enhancement based on the Defendant's position that he had previously deleted the images of child pornography on the confiscated thumb drives and was unaware of their existence because he could no longer access them.

5. Upon inquiry by defense counsel, Assistant United States Attorney Elizabeth Yusi advised by email on November 22, 2017 that the Forensic Examiner, Rudy Jones, who had conducted the analysis of the devices seized from the Defendant's possession, found that the deleted images on the thumb drive were still recoverable and accessible to Mr. McNames. Based on that information, defense counsel withdrew the objection to the enhancement for the possession of more than 600 images.

6. However, following additional inquiry by Mr. McNames, counsel requested and arranged with Assistant United States Attorney Yusi to meet with the

Government's Forensic Examiner to resolve the issue of whether the recovered images of child pornography were in fact accessible to the Defendant, an unsophisticated computer user.

7. On November 13, 2017 in a meeting at the U. S. Attorney's office, the Forensic Examiner, Rudy Jones, reviewed his analysis of the devices and corrected his previous opinion. Mr. Jones found that, in fact, all of the images of child pornography on all of the devices had been deleted. As such, they were in unallocated space which Mr. McNames did not have access to and of whose continued existence Mr. McNames was unaware. The evidence reveals that all of the images recovered had been deleted prior to the date of the offense, November 18, 2016.

8. The Defendant alleges no misconduct by the Government but raised the issue with Assistance United States Attorney Yusi regarding whether the Defendant should be charged and convicted of possession of child pornography on the date alleged in the indictment. The Government acknowledges that this issue must be addressed. It is not disputed that the Defendant accepts full responsibility for his past conduct and does not seek to avoid that.

9. Upon consultation, the Defendant and the Government request that this error be cured by allowing the Defendant to withdraw his plea to Count 4 of the indictment and entering a plea of guilty to a criminal information, to be prepared by

the Government, charging an offense on a date consistent with the evidence in the case.

10. If acceptable to the Court, the Defendant and the Government respectfully suggest and request that this be accomplished in one hearing to be set at the discretion of the Court, perhaps on the date originally set for sentencing, with a later sentencing date to be selected at that time.

### **Argument**

Rule 11(d)(1) of the Federal Rules of Criminal Procedure provides that a defendant in a criminal case may withdraw a plea of guilty before the court accepts the plea for any reason or no reason. Mr. McNames does not do this lightly.

In this instance, as charged, the evidence does not prove that the Defendant knowingly possessed those images on that date. Mr. McNames readily admits, as he did on that day when law enforcement came to his home, that he had previously viewed and possessed Child Pornography. There is an error in the charging document, the indictment, which can be corrected and the parties wish to do so. The Government is in accord with this motion.

### **Conclusion**

Wherefore, the Defendant respectfully moves the Court to grant him leave to withdraw his guilty plea in the above-captioned matter and take such other action as

the court deems appropriate. This matter is currently scheduled for hearing on January 8, 2018.

Respectfully submitted,

EDWARD ALLEN McNAMES

/s/  
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### **CERTIFICATE OF SERVICE**

I certify that on the 18<sup>th</sup> day of December, 2017, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to:

**Elizabeth M. Yusi, Esquire**  
**Assistant United States Attorney**  
**101 West Main Street, Suite 8000**  
**Norfolk, Virginia 23510**  
**(757) 441-6331**  
Email: [Elizabeth.Yusi@usdoj.gov](mailto:Elizabeth.Yusi@usdoj.gov)

And by U. S. Mail to:

**Elizabeth R. Franklin, U.S. Probation Officer**  
**600 Granby Street, Suite 200**  
**Norfolk, Virginia 23510**

/s/

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